



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

~~REQUEST TO BE FILED UNDER SEAL~~

January 19, 2018

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Via Electronic Mail

The Honorable Richard M. Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED
P.4

Re: United States v. Ahmad Khan Rahimi,
16 Cr. 760 (RMB)

Dear Judge Berman:

The Government respectfully submits this letter pursuant to the Court's January 17, 2018 order directing the Government to provide "written factual and legal support for the proposed restitution amount of \$562,803.03." As set forth below, the defendant was convicted for committing crimes for which restitution is mandated by statute. *See* 18 U.S.C. § 3663A. Pursuant to that statute, the amount set forth in the proposed restitution order constitutes a reasonable estimate of the identified losses suffered by some of the victims of the defendant's bombing.

Because this letter contains non-public information relating to victims of the defendant's crimes, the Government respectfully requests that it be maintained under seal.

Applicable Law

Pursuant to the Title 18, United States Code, Section 3663A, "when sentencing a defendant convicted of an offense [that is a crime of violence, or in which a victim has suffered physical injury or pecuniary loss], the court *shall* order . . . that the defendant make restitution to the victim[s] of the offense[s]." 18 U.S.C. §§ 3663A(a)(1) and (a)(c)(1)(A)(i) (emphasis added). The statute defines a "victim" as "a person directly and proximately harmed as a result of the commission of" the offenses. 18 U.S.C § 3663A(a)(2). It further provides that, in cases

Hon. Richard M. Berman
January 19, 2018

Page 2

involving damage to property, the Court shall order the defendant to either “return the property,” or “if return of the property . . . is impossible, impracticable, or inadequate, pay an amount equal to” the greatest of (1) the value of the property on the date of the damage, or (2) the value of the property on the date of sentencing. 18 U.S.C. § 3663A(b)(1)(A), (B). Finally, in cases resulting in bodily injury to victims, the statute requires that the Court order the defendant to:

- (A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
- (B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and
- (C) reimburse the victim for income lost by such victim as a result of such offense.

18 U.S.C. § 3663A(a)(b)(2). The Second Circuit has made clear that the calculation of losses in connection with an order of restitution need only be a “reasonable approximation,” particularly in cases, such as this one, in which “an exact dollar amount is inherently incalculable.” *United States v. Gushlak*, 728 F.3d 184, 196 (2d Cir. 2013) (internal citation and quotation marks omitted); *see also United States v. Reifler*, 446 F.3d 65, 116 (2d Cir. 2006) (“[T]here is no constitutional requirement that the facts needed for the district court’s fashioning of a restitution order be found by a jury or found beyond a reasonable doubt.”)

Losses Sustained by 23rd Street Victims

To date, the Government has identified six victims of the defendant’s bombing on 23rd Street who suffered losses for which restitution is required. These victims, all but one of whom testified at trial, suffered personal injuries, damage to their property, and/or lost income or revenue, and have estimated the value of such losses to the Government. Based on these estimates, and as set forth below, the Government calculated the total amount of restitution required by statute to be \$562,803.03.

Hon. Richard M. Berman
January 19, 2018

Page 3

John LiCastro, Selis Manor, Associated Blind H.D.F.C.	\$ 12,000.00	Repairs to apartments relating to: (1) Broken windows (boarded up or replaced with plexiglass); (2) Glass clean-up; (3) Repairs to damaged interior walls; (4) Some lost items; and (5) Repair to East exit door which was blown in
	\$ 5,000.00	Construction cost for renovated areas: (1) New street level windows broken; and (2) Repairs to damaged scaffolding
	\$ 17,000.00	Total
Adam Krell, Orange Theory Fitness	\$ 17,500.00	Lost Revenue
	\$ 25,000.00	Property Damage
	\$ 3,000.00	Lost Wages
	\$ 45,500.00	Total
Helena Ayeh	\$ 5,040.00	Lost Income
	\$ 1,500.00	Ambulance Bill
	\$ 6,540.00	Total
Saleem Salman	\$ 12,000.00	Lost Income
	\$ 17,500.00	Uber Car Repairs
	\$ 29,500.00	Total
Pauline Nelson	\$ 1,712.94	Car Repairs
	\$ 2,550.09	Lennox Hill Hospital and Chiropractor Bills
	\$ 4,263.03	Total
Eric Ord, Town House Inn at Chelsea	\$300,000.00	Property Damage
	\$160,000.00	Lost Revenue
	\$460,000.00	Total
	\$562,803.03	Overall Total

Hon. Richard M. Berman
January 19, 2018

Page 4

The Government reserves the right to seek additional restitution should the sentencing process lead to the identification of additional victims for whom restitution is mandated by Section 3663A.

Respectfully submitted,

Geoffrey S. Berman
United States Attorney

By: _____/s/_____
Emil J. Bove III
Shawn G. Crowley
Andrew J. DeFilippis
Assistant United States Attorneys
(212) 637-2444 / 1034 / 2231

Cc: Defense Counsel

Please furnish reasonable expense documentation such as check stubs, receipts, bills paid, etc. by 1/29/18.	
SO ORDERED: Date: 1/23/18	Richard M. Berman Richard M. Berman, U.S.D.J.